

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.3862 of 1998
Date of Decision:-25.8.2011

Sarupa

...Appellant

Versus

Puran and others

...Respondents

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Sandeep Chhabra, Advocate with
Mr.Harish Nain, Advocate for the appellant.

Mr.Vivek Singla, Advocate for the respondents.

Mehinder Singh Sullar, J. (Oral)

Having kept the law laid down by Hon'ble Apex Court in case Kashmir Singh vs. Harnam Singh & Anr. 2008(2) R.C.R. (Civil) 688 : 2008 AIR (SC) 1749 into focus, now the short and significant question, though important that arises for determination is, as to whether any substantial question of law is involved in the instant appeal, so as to invoke the jurisdiction vested in this Court under Section 100 C.P.C or not ?

2. Tersenessly, the facts, culminating in the commencement, relevant for the limited purpose of deciding the indicated core controversy, involved in the instant regular second appeal and emanating from the record, are that Puran son of Moti Ram respondent No.1-plaintiff (for brevity “the plaintiff”) filed the suit for a decree of declaration to the effect that he is owner and in possession of the plot, denominated by letters ABCD shown in the site plan (Ex.PY), situated within the abadi deh of village Madina, Tehsil Gohana, District Sonapat, with a consequential relief of permanent injunction, restraining his brother Krishan proforma respondent No.2-defendant No.1 and Sarupa son of Kehru appellant-defendant

No.2 (for short “the defendants”) from interfering in his (plaintiff) possession over the property in dispute.

3. The case set up by the plaintiff, in brief in so far as relevant, was that he is owner and in possession of the plot in question. A demolished kotha belonging to him is in existence and his bricks are also lying in it. The plaintiff is using the same for parking his cart (Buggi) and for other domestic purposes. The defendants have no concern in it. According to the plaintiff that although defendant No.1 had no alienable right, but still, he has illegally executed the sale deed dated 4.1.1993 (Ex.PW4/A) in favour of defendant No.2, without any title or interest in order to grab the plot in dispute of the plaintiff. The sale deed was stated to be illegal, null, void and not binding on his rights. The defendants were intending to dispossess the plaintiff from the suit property, on the basis of alleged sale deed, without any legal right. He requested them not to do so, but in vain, which necessitated him to file the suit. On the basis of aforesaid allegations, the plaintiff filed the suit for a decree of declaration/permanent injunction against the defendants, in the manner indicated hereinabove.

4. The defendants contested the suit and filed their joint written statement, inter-alia pleading certain additional objections of, maintainability of the suit, cause of action and locus standi of the plaintiff. The defendants claimed that plaintiff is neither owner and in possession of the plot in dispute, which had fallen to the share of defendant No.1 in a family settlement. Defendant No.2 has purchased the suit plot from defendant No.1 for a total consideration of ₹ 2000/-, by virtue of registered sale deed (Ex.PW4/A). Since then, defendant No.2 is owner and in its possession. He has tried to explain that he has also purchased the adjoining house of Zile Singh son of Mange Ram, by way of registered sale deed dated 17.2.1993. The defendants have denied the ownership and possession of plaintiff over the property in dispute. It will not be out of place to mention here that the defendants have stoutly denied all other allegations contained in the plaint

and prayed for dismissal of the suit.

5. Controverting the allegations contained in the written statement and reiterating the pleadings of the plaint, the plaintiff filed the replication. In the wake of pleadings of the parties, the trial Court framed the following issues for proper adjudication of the case:-

- 1. Whether the sale deed bearing No.2306 dated 4.1.1993 is illegal, null and void and not binding upon the rights of the plaintiff?OPP*
- 2. Whether the plaintiff is owner in possession of the suit property?OPP*
- 3. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts before the court? If so to what effect?OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 6. Whether the defendants are entitled for special costs under section 35-A CPC ?OPD*
- 7. Relief.*

6. The plaintiff, in order to substantiate his case, examined PW2 Jeet Singh, PW3 Sube Singh, PW4 Rajender Lal Deed Writer, PW5 Ved Pal Draftsman and PW6 Mahender Singh, photographer, who has proved the photographs (Ex.PW6/A to Ex.PW6/C) of the disputed property, while he himself appeared as his own witness as PW1. He has also tendered the report (Ex.PX) of local commissioner, site plan (Ex.PW5/A) and receipt (mark-A) in documentary evidence.

7. On the other hand, in order to controvert the evidence brought on record by the plaintiff, the defendants Krishan and Sarupa appeared as their own witnesses as DW1 and DW2 respectively. No other evidence was produced by them.

8. The trial Court, after taking into consideration the entire evidence on record, decreed the suit of the plaintiff, by means of impugned judgment dated 12.3.1998, the operative part of which is (para 23) as under:-

“Keeping in view the above discussion and issue wise findings, this court is of the opinion that the plaintiff has succeeded in proving his case.

Hence, the suit of the plaintiff is decreed and a decree for declaration is hereby passed in favour of the plaintiff and against the defendants declaring the plaintiff as owner in possession of the plot in dispute, fully detailed in para No.1 of the plaint and the impugned sale deed no.2306 dated 4.1.93 declared illegal, null and void and the same is not binding upon the rights of the plaintiff. Defendants are also restrained from interfering into the possession of the plaintiff over the plot in dispute fully detailed in para No.1 of the plaint, permanently. There shall be no order as to costs. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.”

9. Aggrieved by the decision of the trial Court, the defendants filed the appeal, which was dismissed with costs as well, by the Ist Appellate Court, by way of impugned judgment and decree dated 20.11.1998.

10. Appellant Sarupa (defendant No.2) still did not feel satisfied with the impugned judgments and the decrees of the Courts below and preferred the present regular second appeal. That is how I am seized of the matter.

11. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant appeal in this context.

12. Ex-facie, the argument of learned counsel for appellant-defendant that since the plaintiff has failed to prove his ownership and possession over the suit property, so, the Courts below committed a legal mistake in decreeing his suit, is not only devoid of merit but misplaced as well.

13. As is evident from the record that plot in dispute is situated within the abadi of the village. The plaintiff claimed that the plot in dispute was a part of his ancestral property, which had fallen to his share in a family settlement/partition, while the other plot came to the share of his brother Krishan (defendant No.1), who acknowledged the same. On the other hand, the defendants pleaded that Krishan defendant No.1 was the owner of the plot in dispute and defendant No.2 has purchased it from him, vide registered sale deed (Ex.PW4/A).

The plaintiff has produced PW1 to PW6 to substantiate his claim. The defendants have not examined any other independent witness, except their own self serving statements as DW1 and DW2. DW1 Krishan has admitted that the plaintiff was owner of the plot in dispute and he (defendant No.1) received the same in lieu of his house given to the plaintiff.

14. Above being the position on record, now the sole point, though important that arises for determination in this appeal is, as to whether there is any cogent evidence on record to prove that defendant No.1 has obtained the plot in question from the plaintiff, in lieu of exchange of his house or he had any alienable right in it ?

15. Having regard to the rival contentions of the learned counsel for the parties, to me, the answer must obviously be in the negative, as defendant No.1 has miserably failed in this relevant connection, particularly when PW4 Rajender Lal, Deed Writer, has stated that he did not see the proof of ownership of the plot at the time of execution of the sale deed (Ex.PW4/A). As indicated earlier, no other cogent evidence is forth coming on record except the self serving statements of DW1 and DW2. Moreover, as per the case of the defendants, the plot in dispute was sold for ₹ 2000/-, but as per the sale deed (Ex.PW4/A), the amount of consideration was ₹ 4000/-. On the contrary, PW1 to PW6 have categorically stated that the plaintiff is owner and in possession of the suit property, depicted in the site plan (Ex.PW5/A). The case of the plaintiff finds further corroboration from the report (Ex.PX) of local commissioner appointed by the Court. Thus, the trial Court has rightly accepted the admissible evidence and claim of the plaintiff in this relevant connection.

16. Sequelly, the next celebrated submission of learned counsel for the appellant-defendant that since the plaintiff did not affix the ad valorem court fee, so, his suit was undervalued, again sans merit. A perusal of record would reveal that the defendants have neither agitated the objection of Court fee nor claimed

any issue in this respect in the trial Court. Therefore, they are now estopped from raising such plea at this belated stage, without any basis.

17. Above-all, since the plaintiff has filed the simple suit for a decree of declaration and permanent injunction and he was not party to the alleged sale deed, so, he was not legally required to affix the ad valorem Court fees on the sale consideration, as urged on behalf of the defendants, particularly when he (plaintiff) has already paid the fixed Court fees on the plaint seeking a decree for declaration and permanent injunction. Therefore, the contrary arguments of learned counsel for appellant-defendant “stricto sensu” deserve to be and are hereby repelled under the present set of circumstances.

18. In this manner, the trial court, after analyzing the entire material on record in the right perspective, accepted the claim of the plaintiff. Not only that, the decision of the trial Court was also upheld by the first appellate Court, through the medium of impugned judgment dated 20.11.1998, which, in substance, is (paras 10 to 12) as under:-

“10. It is made out from the pleadings contained in the written statement that the plot in question was earlier owned and possessed by Moti Ram, the sire of the plaintiff and the defendant No.1. However, a family settlement was arrived at between the two brothers more than three and a half decades ago and the plot had fallen to the share of defendant Krishan. It would now be absolutely relevant to peruse evidence brought on record by the defendant to prove the theory of family settlement. After all he admits that the plaintiff too had title to the extent of one half share in the plot in question but he had surrendered it in a family settlement.

11. Defendant Krishan (DW1) has testified that he had sold plot in question to Sarupa defendant for a sum of Rs.4000/- only (Rupees Four Thousand). It may be recalled here that the consideration amount is recorded as Rs.2000/- only (Rupees Two Thousand) in sale-deed Ex.PW4/A. Defendant Krishan has further testified that he and his brother Puran had two residential houses within the Abadi of their village. He had removed the entire timber available in his house and had passed on possession to his brother Puran who in turn gave the plot in question to him. This part of his statement goes to prove that he was owner in

possession of a house whereas Puran was owner in possession of the plot in dispute and both of them had exchanged their respective properties. However, this is indeed not the case of the defendant. He has nowhere pleaded that he was owner of a house and that he had removed timber out of it and had then exchanged the property with the plot in question owned by his brother Puran then.

12. The learned trial judge has rightly observed that no witness from the village has come forward to corroborate the version of the two defendants even as plaintiff Puran has supported his case by putting in the witness-box Jeet Singh (PW2) and Sube Singh (PW3). Both of them have testified that the plot in question is owned and possessed by Puran, who has collected bricks there for raising new construction. Mahender Singh (PW6) has proved photographs Ex.PW6/A to Ex.PW6/C showing bricks and buffalo-cart lying in the plot in question.”

19. Moreover, the learned counsel for the appellant-defendant did not point out any material, much less cogent, to contend as to how and in what manner, the impugned judgments and decrees of the Courts below are illegal and would invite any interference in this relevant behalf.

20. Meaning thereby, the Courts below have taken into consideration and appreciated the entire relevant evidence brought on record by the parties in the right perspective. Having scanned the admissible evidence in relation to the pleadings of the parties, the trial Court as well as the first Appellate Court has recorded the above mentioned concurrent findings of fact. Such pure concurrent findings of fact based on the appraisal of evidence, cannot possibly be interfered with by this Court, while exercising the powers conferred under section 100 CPC, unless and until, the same are illegal and perverse. No such patent illegality or legal infirmity has been pointed out by the learned counsel for the appellant-defendant, so as to take a contrary view, than that of well reasoned decision already arrived at by the Courts below, in this regard.

21. No other meaningful argument has been raised by the learned counsel for the appellant-defendant to assail the findings of the Courts below in this respect. All other arguments, relatable to the appreciation of evidence, now

sought to be urged on his behalf, in this relevant direction, have already been duly considered and dealt with by the Courts below.

22. Likewise, the entire matter revolves around the re-appreciation and re-appraisal of the evidence on record, which is not legally permissible and is beyond the scope of second appeal. Since no question of law, muchless substantial, is involved, so, no interference is warranted, in the impugned judgments/decrees of the Courts below, in view of the law laid down by Hon'ble Supreme Court in Kashmir Singh's case (supra) in the obtaining circumstances of the present case.

23. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

24. In the light of aforementioned reasons, as there is no merit, therefore, the instant appeal is hereby dismissed as such.

25.8.2011
AS

(Mehinder Singh Sullar)
Judge

Whether to be referred to reporter?Yes/No